

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

J.F., a minor child,

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner of  
Social Security,

Defendant.

Case No. C04-5891RJB

ORDER ADOPTING REPORT  
AND RECOMMENDATION  
AND REMANDING FOR  
FURTHER ADMINISTRATIVE  
PROCEEDINGS

This matter comes before the court on the Report and Recommendation of Judge J. Kelley Arnold (Dkt. 20). The court has reviewed the Report and Recommendation and the file herein.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

The plaintiff, J.F., is currently 19 years old. When he was 11 years old, an application seeking Child's SSI disability was filed on his behalf. The plaintiff was found disabled as of August 1, 1997, based upon mental retardation and attention and concentration deficits. On March 1, 2001, a continuing disability review found that the plaintiff's conditions had improved and that his disability had ceased. On reconsideration, the ALJ determined that the plaintiff had a learning disorder that no longer medically or functionally met the severity requirements of the Listing of Impairments. The Appeals Council denied the plaintiff's request for review.

The plaintiff seeks judicial review of the termination of his SSI benefits, contending that

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the ALJ failed to consider whether the plaintiff's condition met the severity requirements of Section 112.02.

## II. DISCUSSION

As fully set forth in the Report and Recommendation, the ALJ erred in determining only whether the plaintiff's claim for benefits satisfied Section 112.05 of the Listings and not assessing the plaintiff's claim under Section 112.02 - Organic Mental Disorders. Section 112.02. For children in the plaintiff's age group, the level of severity is met when the following two criteria are present:

A. Medically documented persistence of at least one of the following:

1. Developmental arrest, delay or regression; or
2. Disorientation to time and place; or
3. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or
4. Perceptual or thinking disturbance (e.g., hallucinations, delusions, illusions, or paranoid thinking); or
5. Disturbance in personality (e.g., apathy, hostility); or
6. Disturbance in mood (e.g., mania, depression); or
7. Emotional lability (e.g., sudden crying); or
8. Impairment of impulse control (e.g., disinhibited social behavior, explosive temper outbursts); or
9. Impairment of cognitive function, as measured by clinically timely standardized psychological testing; or
10. Disturbance of concentration, attention, or judgment;

And

B. Select the appropriate age group to evaluate the severity of the impairment:

2. For children (age 3 to attainment of age 18), resulting in at least two of the following:
  - a. Marked impairment in age-appropriate cognitive/communicative function, documented by medical findings (including consideration of historical and other information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, the results of appropriate standardized psychological tests, or for children under age 6, by appropriate tests of language and communication; or
  - b. Marked impairment in age-appropriate social functioning, documented by history and medical findings (including consideration of information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, the

1 results of appropriate standardized tests; or

2 c. Marked impairment in age-appropriate personal functioning,  
3 documented by history and medical findings (including consideration of  
4 information from parents or other individuals who have knowledge of the  
5 child, when such information is needed and available) and including, if  
6 necessary, appropriate standardized tests; or

7 d. Marked difficulties in maintaining concentration, persistence, or pace.

8 20 C.F.R. Pt. 404, Subpt. P, App. 1. As the Report and Recommendation demonstrates, there is  
9 evidence of persistence of disturbance of concentration, attention, or judgment. Dkt. 20 at 4-5.

10 The test for Organic Mental Disorders also requires the presence of at least two of the  
11 impairments listed under part B, one of which was addressed in the Report and Recommendation  
12 (marked difficulties in maintaining concentration persistence, or pace). Dkt. 4-5. There is also  
13 sufficient evidence of a marked impairment in age-appropriate cognitive and communicative  
14 functions to warrant remand to determine whether the plaintiff has an Organic Mental Disorder  
15 under Section 112.02.

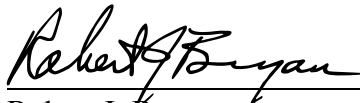
### 16 **III. ORDER**

17 Therefore, it is hereby

18 **ORDERED** that the Report and Recommendation of Judge J. Kelley Arnold (Dkt. 20)  
19 **ADOPTED**. This case is **REMANDED** for further administrative proceedings.

20 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
21 to any party appearing *pro se* at said party's last known address.

22 DATED this 28<sup>th</sup> day of November, 2005.

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24 Robert J. Bryan  
25 United States District Judge  
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